

STATE OF TENNESSEE

PUBLIC CHAPTER NO. 410

SENATE BILL NO. 2316

By Kyle, Henry, Faulk, Marrero, Yager, Watson

Substituted for: House Bill No. 2265

By Sherry Jones, Mike Turner, Hardaway

AN ACT to amend Tennessee Code Annotated, Title 71, Chapter 2, Part 4 and Title 71, Chapter 3, Part 5, relative to the protection of vulnerable persons.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 71, Chapter 2, Part 4, is amended by deleting Section 71-2-403 in its entirety and by substituting instead the following:

Section 71-2-403.

(a) A review of the records and registries set forth in subdivisions (1) through (6) below shall be conducted for all new employees, or for volunteers who are counted in the staff/adult participant ratio and those volunteers who have unsupervised access to the adult participants, in adult day care centers, and for all new department licensing staff who regulate the adult day care licensing program and all new counselors and supervisors providing services in the adult protective services program:

(1) Criminal background history;

(2) Juvenile records history available to the Tennessee Bureau of Investigation;

(3) Any available juvenile court records, if determined necessary by the department;

(4) Vulnerable persons registry pursuant to Title 68, Chapter 11, Part 10;

(5) State's sex offender registry; and

(6) Records of indicated perpetrators of abuse or gross neglect of children or adults maintained by the Department of Children's Services and the Department of Human Services.

(b)(1) Except as otherwise provided in this subdivision (b)(1) and in subsections (c) and (e), and except where the context or intent would otherwise render the language inapplicable to the persons

having access to adults in an adult day care center, the procedures, requirements, and any other statutory provisions involving the requirements for disclosure forms, the methodology for obtaining and reporting the fingerprint-based criminal and available juvenile histories of a person, the exclusions of persons with a prohibited records history, the appeals processes, the department's authority to allow by rule of the department for exemptions from a verified prohibited history, permissive review procedures and any other consistent procedures, shall be the same for persons subject to the provisions of this section as those provided in § 71-3-507 for persons having access to children in childcare agencies licensed by the Department of Human Services pursuant to Chapter 3, Part 5 of this title; provided, that the adult day care center, and not the department, shall be responsible for all of the costs of the fingerprint background checks conducted by the Tennessee Bureau of Investigation and the Federal Bureau of Investigation for its employees or volunteers subject to this section.

(2) With respect to volunteers, this section applies only to those volunteers who serve as volunteers for more than thirty-six (36) hours in any one (1) calendar year.

(c) The adult day care center may require that the costs of the background check be a part of the application process by a prospective employee or volunteer, or it may pay the costs and recover the costs of the fingerprint-based background checks from the prospective employee following employment. The department shall pay all costs required for its employees subject to the required background reviews.

(d) The Tennessee Bureau of Investigation shall make any reports of positive matches pursuant to this section in the same manner as provided for any of the processes authorized by § 71-3-507.

(e) Conviction by a criminal court or adjudication by the juvenile court for an offense, or a lesser included offense, involving the physical, sexual or emotional abuse, gross neglect, financial exploitation or misuse of funds, or theft from any person, or that constitutes conviction or adjudication for an offense involving violence against any person, or conviction of an offense involving the manufacture, sale, possession or distribution of any drug, or a no-contest plea to such offenses, and any pending warrants, indictments, presentments or petitions for such offenses, or the identification of any person on the Department of Health's vulnerable persons registry pursuant to Title 68, Chapter 11, Part 10, on the state's sex offender registry or identification as a perpetrator of abuse or gross neglect of children or adults in the records of the Department of Children's Services or Department of Human Services as provided in § 71-3-515 shall disqualify such person from employment with, or from having any access whatsoever to adults in, an adult day care center as defined by this part, and from employment with the department as

regulatory staff in the department's adult day care licensing program and service staff in the adult protective services program.

SECTION 2. Tennessee Code Annotated, Title 71, Chapter 3, Part 5, is amended by deleting Section 71-3-507 in its entirety and by substituting instead the following:

Section 71-3-507.

(a)(1) The following shall complete a disclosure form in a manner approved by the department disclosing criminal records, juvenile records histories, and the status of such person on the Department of Health's vulnerable persons registry pursuant to Title 68, Chapter 11, Part 10, the state's sex offender registry, and status as an indicated perpetrator of abuse or gross neglect in the records of the Department of Children's Services and the Department of Human Services, or in any jurisdiction, and shall agree to release all such records to the childcare agency and to the department to verify the accuracy of the information contained on the disclosure form:

(A) A person applying to work with children as a paid employee, director, or manager with a childcare agency as defined in § 71-3-501, or with any detention center or temporary holding resource as described in § 37-5-109, or with the department in any position in which any significant contact with children is likely in the course of the person's employment; or who applies for any license, that is not the renewal of an existing license, or otherwise seeks to be an operator, as defined by the rules of the department, of a childcare agency as defined in § 71-3-501 and who has significant contact with children in the course of such role and is not otherwise exempted from the application of this section by rules of the department;

(B) A person who is a new substitute staff person, paid or unpaid, and who is to be used by the childcare agency to meet childcare standards and who serves as a substitute for more than thirty-six (36) hours in any one (1) calendar year; or

(C) A person fifteen (15) years or older who resides in a childcare agency that is being licensed initially or who moves into a childcare agency following initial licensure.

(2)(A) Such persons shall also supply a fingerprint sample in a manner prescribed by the department and by the Tennessee Bureau of Investigation, and shall submit to a fingerprint-based background review of criminal history records, and juvenile records that are available to the Tennessee Bureau of Investigation, to be conducted by the

Tennessee Bureau of Investigation, and shall submit to a review of such person's status on the Department of Health's vulnerable persons registry under Title 68, Chapter 11, Part 10, the state sex offender registry, and pursuant to § 71-3-515, a review of such person's status in the Department of Children's Services and the Department of Human Services records of indicated perpetrators of abuse or gross neglect of children or adults, and, if determined necessary by the department, a review of any available juvenile records in juvenile court.

(B) All persons subject to the requirements of subdivision (a)(1), and all persons applying to work with the department in any position in which any significant contact with children is likely in the course of the person's employment with the department, shall have the fingerprint-based background review, including juvenile records available to the Tennessee Bureau of Investigation, and the registry and perpetrator records and juvenile records reviews required by subdivision (2)(A) completed as required by this section prior to assuming any role described in subdivision (a)(1) or prior to employment with the department; and, if the person is fifteen (15) years of age or older; and

(i) The person is a resident of a childcare agency, the person must have the fingerprint-based background review, including juvenile records available to the Tennessee Bureau of Investigation, and the registry and perpetrator records reviews, and if determined necessary by the department juvenile court records reviews, required by subdivision (a)(2)(A) completed prior to the granting of any license that is not the renewal of an existing license to the childcare agency in which the person resides at the time of initial application; or

(ii) If such person is to become a resident of the childcare agency, the person must have the reviews required by subdivision (a)(2)(B)(i) completed prior to the person's becoming a resident of the childcare agency.

(C) The person or entity with whom or which a person subject to subdivision (a)(1) will be, or is, associated shall be responsible for obtaining, and submitting as directed by the department the fingerprint sample and any information necessary to process the fingerprint-based background reviews and reviews required by this section prior to such person's assumption of any role described in subdivision (a)(1).

(3) The disclosure forms shall include at a minimum the following information:

(A) The Social Security number of the applicant, substitute or resident;

(B) The complete name of the applicant, substitute or resident;

(C) Disclosure of information relative to any violations of the law, including pending criminal or juvenile charges of any kind, and any conviction or juvenile adjudication involving a sentence or suspended or reduced sentence, and a release by the person of all records involving the person's criminal and juvenile background history and records relative to such person's status on the Department of Health's vulnerable persons registry maintained pursuant to Title 68, Chapter 11, Part 10, on the state's sex offender registry and the status of such person as an indicated perpetrator of abuse or gross neglect of a child or adult as determined by any agency of this state or any other jurisdiction; and

(D) A space for the person to state any circumstances that should be considered in determining whether to allow the person who has a criminal, juvenile, registry or abuse or gross neglect records history to be employed or to provide substitute services or to remain as a resident in the agency.

(4) The form shall notify the person that falsification of required information may subject the person to criminal prosecution, and that the person's employment, licensing or other status or circumstances in the childcare agency or the department is dependent upon the person's criminal and available juvenile records history status, the person's status on the Department of Health's vulnerable persons registry pursuant to Title 68, Chapter 11, Part 10, and on the state's sex offender registry, and, pursuant to § 71-3-515, such person's status as an indicated perpetrator of abuse or gross neglect of children or adults as contained in the records of the Department of Children's Services and the Department of Human Services.

(5) A copy of the disclosure form shall be maintained in the childcare agency's records for review by the department, and the department shall maintain a copy of the disclosure form in the records of the applicant for a license or as operator, or for employment with the department.

(b)(1) The disclosure form, or information contained on the form, obtained pursuant to this section, together with the fingerprints of

the person, shall be submitted by the childcare agency for its applicants, licensees, operators, substitutes or residents, and by the department for its applicants, to the appropriate department staff or state contractors providing fingerprinting services, in such format as required by the department and the Tennessee Bureau of Investigation. The department or contractor will transmit the necessary information to the Tennessee Bureau of Investigation for completion of the fingerprint-based background review of criminal records and juvenile records that are available to the Tennessee Bureau of Investigation.

(2) The Tennessee Bureau of Investigation shall compare the information and the fingerprint sample received with the computer criminal history files maintained by the bureau and, to the extent permitted by federal law, with federal criminal databases, and shall conduct the fingerprint and criminal history background check for the person pursuant to § 38-6-109. It shall report the existence of any criminal or juvenile history involving the person to the department, which shall inform the childcare agency and the person regarding the person's ability to assume a position for which a background review is required by this section.

(3) The results of the inquiry to the Tennessee Bureau of Investigation shall be documented in the records of the childcare agency for the person for whom the background check is sought, and the department shall also maintain a record of the results of all persons for whom a criminal background history is received.

(4) The department shall notify in writing the appropriate district attorney general of any falsification of the information on the disclosure form.

(5)(A) The department shall pay to the Tennessee Bureau of Investigation the cost of processing the criminal history background fingerprint check requested by the agency or by the department as set forth in § 38-6-109. Payment of such costs is to be made in accordance with §§ 38-6-103 and 38-6-109.

(B) The childcare agency shall be responsible for all costs associated with obtaining, handling and processing of the fingerprint sample that is submitted to the Tennessee Bureau of Investigation.

(C) The department shall only be responsible for payment for one (1) processing fee that is required by the Tennessee Bureau of Investigation. If the fingerprint sample is rejected, and if any further costs are required to process the fingerprint, the childcare agency is responsible for any further costs, regardless of the number of efforts required to obtain a valid fingerprint sample.

(c)(1) All persons subject to the provisions of subsection (a), and employees of the department's licensing division, shall also be subject to a review by the department of their status on the Department of Health's vulnerable persons registry pursuant to Title 68, Chapter 11, Part 10, on the state's sex offender registry, and a review conducted pursuant to § 71-3-515, of their status in the Department of Children's Services and the Department of Human Services records of indicated perpetrators of abuse or gross neglect of children or adults and, if determined necessary by the department, a review of any available juvenile records in juvenile court.

(2) The department shall conduct the review for license applicants and operators.

(3) The results of the inquiry to the registries and the departments' records shall be maintained in the person's records at the agency and with the department.

(d) The childcare agency or the department shall not permit a person to assume any role described in subdivision (a)(1) prior to the completion of a review of the criminal history and juvenile records available to the Tennessee Bureau of Investigation and the juvenile court, including the fingerprint-based background review, review of the Department of Health's vulnerable persons registry and the state's sex offender registry, and, pursuant to § 71-3-515, a review of the Department of Children's Services and the Department of Human Services records of indicated perpetrators of abuse or gross neglect of children or adults, and, if determined necessary by the department, juvenile court records reviews. Such reviews must demonstrate that the person is not subject to a criminal history or a juvenile history or a history on the registries or in the records of the Department of Children's Services or the Department of Human Services that would, as described in this part, disqualify or otherwise exclude such person from any role described in subdivision (a)(1).

(e)(1)(A)(i) Whether obtained by use of the procedures established in this section or whether information is obtained by any other means, no person shall be employed with, be a licensee or operator of, provide substitute services to, or have any access whatsoever to children in a childcare agency as defined by this part, nor shall such person be employed with the department in a position having significant contact with children, whose criminal or available juvenile background records, registry or perpetrator records demonstrate that the person has been convicted of, pled guilty or no contest to an offense or lesser included offense, or is the subject of a juvenile petition or finding that would constitute an offense or lesser included offense, or whose criminal or juvenile background history report or other information demonstrates the existence of a pending warrant, indictment, presentment or petition, involving:

(a) The physical, sexual or emotional abuse or gross neglect of a child;

(b) A crime of violence against a child, or any person;

(c) Any offense determined by the department, pursuant to properly promulgated rules, to present a threat to the health, safety or welfare of children;

(d) The identification of the person on the Department of Health's vulnerable persons registry pursuant to Title 68, Chapter 11, Part 10, or on the state's sex offender registry, or, whose status, pursuant to a review under § 71-3-515, of the Department of Children's Services and the Department of Human Services records of indicated perpetrators of abuse or gross neglect of children or adults, or if determined necessary by the department, reviews of available juvenile court records, demonstrate a history that would require the person's exclusion under this part.

(ii) No person who is currently charged with or who has been convicted of or pled guilty to a violation of §§ 39-13-213, 55-10-101, 55-10-102 or 55-10-401, or any felony involving use of a motor vehicle while under the influence of any intoxicant, may, for a period of five (5) years after the date of such conviction or felony plea, be employed as or serve as a driver transporting children for a childcare agency.

(B)(i) Upon receipt from the department of the criminal and juvenile fingerprint-based background report or other information regarding the criminal, juvenile, vulnerable persons, sex offender or perpetrator records histories of a person about whom such information was obtained, the department shall notify the childcare agency and the person of the person's clearance to assume a position with the childcare agency or that the person must be excluded from positions or circumstances with the agency described in subdivision (a)(1), or from any access to children.

(ii) The childcare agency, and the department for its employees, shall immediately

exclude any person from employment, from substitute services or from any access whatsoever to children in the childcare agency or, if a resident of a childcare agency, the agency shall exclude the resident from access to children in the childcare agency, if the criminal, juvenile, registry, or perpetrator records history, or other information regarding such person place the person within the prohibited categories established in subdivision (e)(1)(A). The department shall deny the license or operator status of any such person. If an exemption from the exclusion is provided for by rule of the department pursuant to subsection (f), such person shall remain excluded or that person's license or operator status shall be denied until it is determined by the department that there is a basis for an exception from the exclusion.

(iii) The failure of a childcare agency to exclude a person with a prohibited criminal, juvenile, vulnerable persons or sex offender registry or perpetrator records history at a childcare agency from employment with the agency, or from the provision of substitute services to children in the agency, or the failure, as determined by the department, to adequately restrict the access of a resident or any other person in a childcare agency to children being cared for by the agency, shall subject the childcare agency to immediate suspension of the agency's license by the department.

(2) Any person who is excluded pursuant to this section or whose license or operator status is denied or revoked based upon the results of a disclosure form statement, fingerprint-based background, criminal or juvenile records history, registry, or perpetrator history review pursuant to this part, or other records review, may appeal the exclusion to the department within ten (10) days of the mailing date of the notice of such exclusion to the subject person.

(3) If timely appealed, the department shall provide an administrative hearing pursuant to the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5, Part 3, in which the appellant may challenge the accuracy of the determination.

(4) The appellant may not collaterally attack the factual basis of an underlying exclusionary record except to show that the appellant is not the person identified on the record. Further, except to show that the appellant is not the person identified on the record, the appellant may not collaterally attack or litigate the

facts that are the basis of a reported pending criminal or juvenile charge except to show that such charge was, or since the report was generated, has been dismissed, nolle, has resulted in an acquittal or has been expunged.

(f)(1) The department may by rule provide for a review process that utilizes an advisory group of law enforcement personnel, persons experienced in child protective services, persons experienced in child development issues and childcare providers, or such other persons as it determines are appropriate, to consider and, if appropriate, recommend to the department exemptions from the exclusions established by this section, or for any other exclusions of persons established pursuant to the department's rules, that are based on the person's criminal background or juvenile background history or from the records of the person maintained in the vulnerable persons or sex offender registries, or contained in the indicated perpetrator records of the Departments of Children's Services or Human Services.

(2) Any exemption granted must be based upon extenuating circumstances that would clearly warrant such exemption, and such determination shall be made in writing in the record of the department and of the childcare agency and shall be open to public inspection.

(3) If an exemption rule is promulgated by the department under this part, or by any state agencies utilizing the methods authorized by subsection (g) or (h), the person who is not granted an exemption from the exclusion upon review of the person's criminal, juvenile, registry or other records history pursuant to this part may have this issue considered in an administrative appeal as provided by subsection (e).

(g)(1)(A) A "child care agency" as defined in Section 37-5-501 or Section 71-3-501, a "child care program" as defined in Section 49-1-1102, the Department of Children's Services, the Department of Education, the Department of Human Services, the Department of Mental Health and Developmental Disabilities, the division of mental retardation services, and any other state agency or any person or entity that contracts with the state may require the persons set forth in subdivisions (i) through (iii) to undergo a background or records review of any kind, to complete a disclosure form stating the person's criminal and juvenile records history and agree to release all records involving the person relating to the criminal, juvenile and perpetrator records history of such person to the entities described in subdivision (g)(1)(A), and, if further required by the requesting entity, to supply a fingerprint sample and submit to a fingerprint-based review of criminal and juvenile records available to the Tennessee Bureau of Investigation to be conducted by the Tennessee Bureau of Investigation. The person may also be required to submit to a

review of the person's status on the Department of Health's vulnerable persons registry under Title 68, Chapter 11, Part 10, and on the state's sex offender registry, and pursuant to § 71-3-515, a review of the Department of Children's Services and the Department of Human Services records of indicated perpetrators of abuse or gross neglect of children or adults, and, if determined necessary by the agency, department or contractor, a review of any available juvenile records in juvenile court. The results of such inquiries shall be maintained in the person's records. Failure or refusal of a person to submit to or complete the disclosures, background and records reviews required by the entities in subdivision (g)(1)(A) shall result in the immediate exclusion of the person from any position or status for which such reviews are required by this section.

(i) A person applying to work or substitute, or currently working, in any capacity as a paid employee, licensee or operator, or substitute, or volunteering, with children with the entities in subdivision (g)(1)(A), or who otherwise has access to children in those entities;

(ii) An applicant for a foster parent position or an applicant to be an adoptive parent, or a current foster parent or a current prospective adoptive parent with the Department of Children's Services; or

(iii) A person fifteen (15) years of age or older who resides in a childcare agency licensed pursuant to this part or Title 37, Chapter 5, Part 5, and who is not otherwise required by the provisions of subdivision (a)(1), or who is not otherwise required by any other provision of law.

(B) Nothing in this subsection (g) shall be construed to mean that any other law that mandates that fingerprint-based background, registry, or any records review be conducted on applicants for employment, licensee, operator, substitute, volunteer or agency resident status is made voluntary, repealed or superseded in any manner by the provisions of this subsection (g), and the provisions of this section are supplementary to, and are not in lieu of, any mandatory provisions for such other statutorily required background, registry or records checks.

(2) The disclosure form shall contain the information described in subdivisions (a)(3) and (a)(4).

(3) A copy of the disclosure form shall be maintained in the requesting entity's records of the persons for whom the background check is sought.

(4)(A) The fingerprints of the person shall be submitted by the entity authorized by this subsection (g) to do so, to the Tennessee Bureau of Investigation in such format as required by the bureau.

(B) The Tennessee Bureau of Investigation shall compare the information received and the fingerprints of the person with the computer criminal history files, and juvenile history files available to and maintained by the bureau and, to the extent permitted by federal law, with federal criminal databases to verify the accuracy of the criminal or juvenile violation information pursuant to § 38-6-109, and shall report the existence of any criminal or juvenile history involving the person to the requesting entity, and if the report was made to an entity that is licensed by any state agency, the bureau shall also send a copy of the report showing the criminal or juvenile history to the state agency.

(C)(i) For a person who was not subject to a fingerprint-based or other records screening prior to assuming a role described in subdivision (g)(1)(A), such person's existing status in such role shall be conditional upon the satisfactory outcome of any requested fingerprint-based background review, criminal, and available juvenile records review, and upon vulnerable persons and sex offender registries and Department of Children's Services and Department of Human Services perpetrator records, reviews, and, if determined necessary by the entity, a review of any available juvenile records in juvenile court, that may be conducted pursuant to this section; provided, however, if a person is initially applying to assume any type of role described in subdivision (g)(1)(A), and an entity described in subdivision (g)(1)(A) utilizes this subsection (g) as a pre-employment screening procedure, such person shall not assume such role until satisfactory completion of such reviews.

(ii) In either circumstance in subdivision (g)(4)(C)(i), the criminal and available juvenile history and fingerprint-based background review, the vulnerable persons and sex offender registry review and any review of the perpetrator records of the Departments of Children's Services and Human Services must demonstrate that the person is not

subject to a criminal or juvenile history or a history on such registries or in such records that would, as described in this part, disqualify or otherwise exclude such person from any role described in subdivision (g)(1)(A). If the fingerprint-based background or records review, or any other information from any other source confirms that subsection (e) is applicable, that person shall not be permitted to have further contact with children in such role, except as otherwise permitted by this section.

(iii) A person's employment or contract status shall not remain in a conditional status for a position with any state agency for which federal law or regulations do not permit the state agency to license or approve the position until all necessary licensing requirements are met, unless specifically authorized by state or federal law or regulation to the contrary.

(iv) The employment status of persons for whom a post-employment fingerprint-based background, registry or record review was conducted, or the status of existing licensees or operators, substitutes, volunteers or residents of a childcare agency for whom such reviews were conducted after license approval, and who were not otherwise subject to pre-status applicant or access reviews and to the exclusionary provisions provided in this section, shall be governed by any regulations that may govern their status in a regulated entity or by applicable employment law.

(D) The results of the inquiry to the Tennessee Bureau of Investigation or other registry or records review shall be documented in the records of the entity requesting the reviews. If the entity is regulated by, or is a contractor to, the State of Tennessee, the entity shall immediately report exclusionary results of the criminal and juvenile history background, registry or perpetrator records reviews to its regulatory or contracting state agency.

(E) If the information submitted on the disclosure form appears to have been falsified, the entity requesting the background check, or if the entity is regulated by or has a contract with the State of Tennessee, the regulatory or contracting agency shall notify the district attorney general of the falsification in writing.

(F) Any costs incurred by the Tennessee Bureau of Investigation in conducting such investigations of such applicants shall be paid by the entity that requests such investigation and information. Payment of such costs is to be made in accordance with the provisions of §§ 38-6-103 and 38-6-109.

(h)(1)(A) As a supplemental method of criminal and juvenile background history review for any applicants for employment, for license or operator status, or for substitute or volunteer status with childcare agencies or childcare programs, or with the state agencies or their contractors, as listed in subdivision (g)(1) or with the entities that the state agencies may regulate, or for residents of new childcare agencies, or for current employees, licensees, operators, substitutes or volunteers of childcare agencies or for current residents of childcare agencies, those entities listed in subdivision (g)(1), which have an agreement for access to the Tennessee Bureau of Investigation's criminal and available juvenile history database, may require such persons to submit a disclosure form as set forth in subdivisions (a)(3) and (a)(4), a copy of which shall be maintained with the requesting entity's records, and agree to release all records involving the person relating to the criminal and available juvenile history of such person.

(B) Those entities with such an agreement may then access directly the Tennessee Bureau of Investigation's Tennessee Crime Information Computer (T.C.I.C.) system and conduct a name search of Tennessee criminal and available juvenile history records by using only the information contained on the disclosure form completed pursuant to subdivision (h)(1)(A), or by using any other information available to the searching entity.

(2) If information obtained by this method indicates that there exists, or may exist, a criminal or juvenile record on the person, the entity conducting the search may further review the criminal and juvenile record history with the person and, as appropriate, with the entity with whom the person who is the subject of the review is associated, to obtain further verification. The requesting entity, at its own cost, may also request fingerprint samples as otherwise authorized by this section and submit the fingerprints for a complete Tennessee and federal criminal and available juvenile history background review pursuant to this section and § 38-6-109.

(3) The results of the search shall be maintained in the records of the person about whom the search was made and shall be subject to review by the regulating entities.

(4) Nothing in this subsection (h) shall be construed to mean that any other law that mandates that criminal and juvenile background reviews be conducted on applicants for employment, for license or operator status, for substitute or volunteer service positions or for resident status is made voluntary, repealed or superseded in any manner by the provisions of this subsection (h), and the provisions of this subsection (h) are supplementary to, and are not in lieu of, any mandatory provisions for such other statutorily required criminal and juvenile background reviews.

(i) The provisions of subsections (e) and (f), including, but not limited to, the exclusion of persons from providing care or being licensed for the care of children or having access to children upon determination of the criminal, available juvenile, registry or perpetrator records background of such persons, the suspension of operations of or the denial or regulation of any license, certification or approval of any entities that fail to exclude persons with an exclusionary history, and the exemptions from the exclusionary provisions shall be applicable to such persons having exclusionary backgrounds or histories determined by the processes established by subsections (g) and (h) or by any other means.

(j) Any person disqualified by a state agency from care for or access to children based upon the results of any fingerprint-based, criminal, juvenile, registry, perpetrator records or other records review conducted under subsections (g) and (h), or by any other means may, as provided in subdivisions (e)(2)-(4), appeal that determination to a state agency that has made the request.

(k) Nothing in this section shall be construed to prevent the exclusion of any person from providing care for, from being licensed or certified or approved for the care of children pursuant to this part or from having access to a child in a child caring situation if a criminal or juvenile proceeding background history or other record that would require the person's exclusion under this part is discovered and verified in any other manner other than through a procedure established pursuant to this section. All procedures, rules, and appeal processes established pursuant to this section for the protection of children and the due process rights of excluded persons shall also be applicable to such persons.

(l) It is unlawful for any person to falsify any information required on the disclosure form required by this section. A person who knowingly fails to disclose on the disclosure form required information or who knowingly discloses false information or who knowingly assists another to do so commits a Class A misdemeanor.

SECTION 3. Tennessee Code Annotated, Title 71, Chapter 3, Part 5, is amended by adding the following new section:

Section 71-3-515.

(a) The Department of Children's Services and the Department of Human Services shall develop a procedure whereby the names and other identifying information for all potential employees of the Department of Human Services in that department's licensing division and adult protective services program and any persons who are subject to the provisions of § 71-2-403 or § 71-3-507, and who, under those provisions, may have contact with children in a childcare agency or with adults in an adult day care agency licensed by the Department of Human Services, shall be submitted to the Department of Children's Services and the Department of Human Services adult protective services program to determine if the potential employees or other persons subject to those provisions were found by the Department of Children's Services or the Department of Human Services adult protective services program to have perpetrated abuse or gross neglect of a child or adult.

(b) No person shall be reported as an indicated perpetrator of abuse or gross neglect for purposes of this part or Title 71, Chapter 2, Part 4, by either the Department of Children's Services or the Department of Human Services adult protective services program unless it is determined that the due process rights of each such person were either offered, but not accepted, or were fully concluded pursuant to the rules of the Department of Children's Services or the Department of Human Services and applicable state and federal law.

SECTION 4. This act shall take effect on October 1, 2009, the public welfare requiring it.

PASSED: May 26, 2009



RON RAMSEY
SPEAKER OF THE SENATE



KENT WILLIAMS, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 11th day of June 2009



PHIL BREDESEN, GOVERNOR